

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
SHER-WOOD PRODUCTS CO., INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 85-13

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$100 notice and order of civil penalty for the alleged violation of Sections 8.02(1) and 8.05(1) of Regulation I, came before the Pollution Control Hearings Board; Lawrence J. Faulk (presiding) and Wick Dufford, at a hearing in Seattle on April 1, 1985. Board member Gayle Rothrock later reviewed the record.

1 Appellant was represented by J.F. Cramer, Vice President and  
2 Comptroller; respondent was represented by Keith D. McGoffin, its  
3 attorney. Court Reporter Duane W. Lodell recorded the proceedings.

4 Witnesses were sworn and testified. Exhibits were admitted and  
5 examined. Argument was heard. From the testimony, evidence, and  
6 contentions of the parties, the Board makes these

7 FINDINGS OF FACT

8 I

9 Pursuant to RCW 43.21B.260, respondent has filed a certified copy  
10 of its Regulation I, and amendments thereto, which are noticed.

11 Section 8.02(1) makes it unlawful for any person to cause or allow  
12 an outdoor fire in an area where respondent agency has prohibited  
13 fires altogether.

14 Section 8.05(1) makes it unlawful for any person to cause or allow  
15 any outdoor fire other land clearing burning or residential burning  
16 without prior written approval by the counsel officer or agency board.

17 Section 3.29 provides for a civil penalty of up to \$1,000 per day  
18 for each violation.

19 II

20 Appellant company operates a lumber cut stock facility on the  
21 Tacoma Tide Flats.

22 III

23 On November 26, 1984, respondent inspector's attention was drawn  
24 to blue smoke and flames coming out of a burn barrel between buildings  
25 and lumber piles of appellant's company.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
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1 The inspector photographed the barrel fire composed of untreated  
2 scrap wood, and spoke to Mr. Cramer. Testimony indicated that two  
3 people were using the burn barrel to keep warm on a cold day. The  
4 inspector advised Mr. Cramer of the regulations prohibiting such fires  
5 and asked that it be extinguished. Testimony indicated that the fire  
6 was immediately extinguished.

7 IV

8 In 1976, respondent PSAPCA declared the Tacoma Tide Flats a  
9 no-burn area, and has retained it in that status, due to  
10 non-attainment of federal ambient air quality standards.

11 V

12 Appellant Sher-Wood Products Co., Inc. received two notices of  
13 violation (20166 and 20167) and a Notice and Order of Civil Penalty  
14 stemming from this event. Mr. Cramer, on behalf of himself and his  
15 company, appealed the \$100 penalty to this Board of January 15, 1985,  
16 stating that they were unaware of the burning ban. He explained that  
17 the fire was ignited solely for hand-warming purposes on a cold day.

18 VI

19 Appellant company has no previous violations of open burning  
20 regulations. The company operates several fixed emission sources on  
21 its grounds but has never been cited for any kind of air pollution  
22 violation concerning them. PSAPCA's inspector testified that the  
23 company has always been completely cooperative with the agency.

24 VII

25 Any Conclusion of Law which should be deemed a Finding of Fact is  
26 hereby adopted as such.

27 FINAL FINDINGS OF FACT,  
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1 From these Findings the Board makes these

2 CONCLUSIONS OF LAW

3 I

4 The Board concludes that appellant Sher-Wood Products Co., Inc.  
5 technically violated Sections 8.02(1) and 8.05(1), as alleged, on  
6 November 26, 1984. However, only one notice of violation should have  
7 been issued. The two regulations are, in the circumstances, two ways  
8 of stating the same substantive offense. They do not address  
9 differing conduct. Two violations would support two penalties. Here  
10 only one penalty was appropriate.

11 II

12 Even hand-warming fires may be disallowed. See Agnew Lumber v.  
13 SWAPCA, PCHB 70-18 (1971). But a penalty of \$100 for building such a  
14 fire may be viewed as excessive. American Contracting v. SCAPCA, PCHB  
15 No. 35 (1971).

16 III

17 The subject occurrence on November 26, 1984, was unfortunate.  
18 Notwithstanding that the site is in a non-attainment area for  
19 particulate, given appellant's record of no cited violations of  
20 Regulation I, and the circumstances of this event, the Board concludes  
21 that the imposition of a \$100 fine was excessive. Seventy-five  
22 dollars of the civil penalty should be stricken.

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25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
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IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

FINAL FINDINGS OF FACT,  
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ORDER

Violation of Regulation I is affirmed. Seventy-five dollars of the civil penalty is vacated; a penalty of \$25 is sustained.

Done this 3<sup>rd</sup> day of April, 1985.

POLLUTION CONTROL HEARINGS BOARD

 4/3/85  
LAWRENCE J. FAULK, Chairman

  
WICK DUFFORD, Lawyer Member

  
GAYLE ROTHROCK, Vice Chair

FINAL FINDINGS OF FACT,  
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